

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRED WHELAN and MEGAN ELLIS,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

DILIGENT CORPORATION,

Defendant.

ANALISA TORRES, District Judge:

USDC SDNY
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22 Civ. 7598 (AT)

ORDER

Pending before the Court is Plaintiffs' motion for preliminary approval of a class action settlement. ECF No. 36; *see also* ECF No. 39 (ordering supplemental briefing). As part of their motion, Plaintiffs seek preliminary approval of a "California Settlement Subclass," which would "include[] all Settlement Class Members who resided in California on May 23, 2023." ECF No. 37 at 4.

"When exercising its discretion to certify subclasses, a court must assure itself that each subclass independently meets the requirements of Rule 23." *Ramirez v. Riverbay Corp.*, 39 F. Supp. 3d 354, 362 (S.D.N.Y. 2014). Plaintiffs have not provided any indication or estimate of the California Settlement Subclass' numerosity. *See* Fed. R. Civ. P. 23(a)(1); ECF No. 37 at 24; ECF No. 38 ¶ 4; ECF No. 33 ¶ 78(a).

Accordingly, by **March 10, 2025**, Plaintiffs shall file a letter brief addressing the application of Rule 23 to the California Settlement Subclass.

SO ORDERED.

Dated: February 24, 2025
New York, New York



ANALISA TORRES
United States District Judge